IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 583 of 2000

Date of Decision : 26.10.2007

State of H. P. …Appellant.

Versus:

Ashif Khan …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No.*

For the appellant: Mr. Ashok Chaudhary, Addl. A. G.

For the respondent : Mr. Balwant Kukreja, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 23.5.2000 passed by the Judicial Magistrate Ist Class (II), Shimla, in Criminal Case No. 216/2 of 1995, titled as State v. Ashif Khan, acquitting the accused of the charged offence under sections 353 & 332 of the Indian Penal Code.

As per the case of the prosecution, on 8.4.1995 complainant Shri Ganga Singh (PW-8) along with Shri Sita Ram (PW-5) were on patrolling duty in between Police Station, Sadar, Shimla upto Central Telegraph Office when after reaching a place near Bansal Book Depot, Lower Bazar, Shimla at about

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

11.15 P.M., they met two persons, who enquired from Shri Ganga Singh (PW-8) as to whether he belonged to police force or home guards force to which he replied that he was from the cadre of Home guards. At that, the accused, who was one of them, suddenly started giving beatings to the complainant. The other persons ran away. After hearing the whistle, one Prakaram Singh (PW-1), who was also on patrolling duty also reached the spot and he along with Shri Sita Ram (PW-5) rescued Shri Ganga Singh from the clutches of the accused. The accused who also tried to run away was apprehended and brought to Police Station, Sadar. The matter was reported to the police vide application (Ext. PW-8/A) on the basis of which an FIR (Ext.PW-4/B) was registered with Police Station, Sadar, Shimla under Sections 353 & 332 IPC. The duty extracts of the complainant and the witnesses who were on patrolling duty were taken vide memo Ext.PW-2/A. Ext.P-1 is the duty extract of PW-5 & PW-8 and Ex.P-2 is the duty extract of PW-1. The accused was got medially examined and his MLC mark-A was also obtained. With the completion of the investigation, the challan was presented in the Court for trial.

The provisions of Section 207 Cr.PC, were complied with and the accused was charged for the offences under Sections 353 & 332 IPC (wrongly typed 352) to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined 8 witnesses and statement of the accused under Section 313 Cr.PC was also recorded. The accused took the defence that he was called from his house which is near the Police Station, Sadar, Shimla, and he has been falsely implicated due to some business issues.

The Court below came to the conclusion that the case of the prosecution was not proved beyond reasonable doubt for the reason that there were contradictions in the version of the witnesses and thus the accused were acquitted. The case of the prosecution is primarily based on the statements of Shri Prakaram Singh (PW-1), Shri Sita Ram (PW-5) and Shri Ganga Singh (PW-8). Other witnesses, namely, S/Shri Jogesh Kumar (PW-2), Bhoop Singh (PW-3), Amar Singh (PW-4), Mohi Dhar (PW-6) and Bhopal Singh (PW-7) are the police officials and their deposition is formal in nature. The Investigating Officer in the present case has not been examined. No independent eye witness has been examined by the prosecution nor was any such person associated during the course of investigation. The doctor who is stated to have examined the complainant Shri Ganga Singh (PW-8) and prepared the MLC mark 'A' has not been examined by the prosecution as witness. In order to prove the guilt of the accused beyond reasonable doubt for the charged offences, the statements of the aforesaid three witnesses need to be examined. The accused has the advantage of having been

acquitted by the Court below after careful and complete appreciation of material on record.

Ext.P-1 is the extract of the duty showing that PW-5 & PW-8 were on patrolling duty from 11 P.M onwards from Central Telegraph Office up to Command. The duty hours are from 11 P.M. to 5 A.M. The incident, as per Ext.PW-4/B is stated to have taken place at about 11.15 P.M. The place of occurrence of the incident does not fall within the jurisdiction and area on which the witnesses were to carry out the patrol. Ext.P-2 is the duty extract of PW-1 from which it is evident that he was supposed to patrol between the Central Telegraph Office upto the place called as Delhi Cloth Mills. Both the patrolling routes do not overlap and are in opposite direction.

As per the version of PW-5, he and PW-8 had caught hold of accused and taken him to the Police Station. This version stands contradicted by the version of PW-1. According to whom, it was he who had caught hold of the accused after he has seen PW-5 & PW-8 run after him. Further, the presence of PW-5 & PW-8 at the place of occurrence of the incident itself appears to be doubtful as at the time of incident they were on patrolling duty and the place of incident does not fall within their jurisdiction. Suggestion has been put to PW-8 that the accused is a tailor master and there was some dispute with regard to the stitching of clothes given by the complainant. This is in line with the defence taken by the accused.

Keeping in view the totality of the circumstances, in my view, the Court below has appreciated the evidence as also the material on record while arriving at its conclusion. There is no perversity in the same.

I see no reason to interfere with the findings and conclusions of the Court below and the appeal is accordingly dismissed. Bail bonds stand discharged.

October 26, 2007 **(Sanjay Karol),**
(*rana*) **Judge.**